DISPOSITION AND DEVELOPMENT AGREEMENT

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by and between

REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS

and

K B HOME SOUTH BAY INC.

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ATTACHMENTS

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (this "Agreement") is entered into by and between the REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS (the "Agency") and K B HOME SOUTH BAY INC., a California corporation (the "Developer") as of January ___, 2005. The Agency and the Developer agree as follows:

PART 1 SUBJECT OF AGREEMENT

Section 101 Purpose of the Agreement

a. The purpose of this Agreement is to effectuate the Redevelopment Plan for the Milpitas Redevelopment Project No. 1, by providing for the following: (a) the acquisition, disposition and development of the hereinafter defined Site; (b) the construction and installation of certain public improvements; and (c) the provision of affordable housing on and off the Site. The development of the Site, construction and installation of public improvements and provision of affordable housing pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City of Milpitas and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state, and local laws and requirements.

b. Reference is hereby made to that certain Memorandum of Understanding by and among KB Home South Bay Inc., Milpitas Redevelopment Agency, City of Milpitas and County of Santa Clara regarding Affordable Housing on the Elmwood Property, dated as May 18, 2004 (the "MOU"), which is incorporated herein by this reference. One purpose of this Agreement is to implement and carry out the MOU. To the extent there are any inconsistencies between the provisions of this Agreement and provisions of the MOU, the provisions of this Agreement shall control.

c. Reference is hereby made to that certain Agreement for the Purchase and Sale of Real Property (the "County Purchase and Sale Agreement"), dated as of August, 2003, entered into by and between the County of Santa Clara ("Agency" therein) and Developer ("Developer" therein). The County Purchase and Sale Agreement contemplates that the County would assign its rights and obligations under the County Purchase and Sale Agreement to the Agency and that the Agency would thereafter assume and perform County's obligations under the County Purchase and Sale Agreement, with the exception of certain specified obligations retained by the County of Santa Clara. Prior to the Close of Escrow, the County will assign its obligations under the County Purchase and Sale Agreement to convey the Property to the Agency, and the agency shall thereafter convey the Property to Developer pursuant to the terms and conditions set forth in the County Purchae and Sale Agreement. This Agreement is intended to supplement the County Purchase and Sale Agreement. In the event of any inconsistencies between the provisions of this Agreement and the County Purchase and Sale Agreement with regard to any of the rights or obligations of the Agency or Developer, including, without limitation the terms and conditions on which Developer shall purchase the Property, the provisions of the County Purchase and Sale Agreement shall take precedence over the

inconsistent provisions in this Agreement. A copy of the County Purchase and Sale Agreement is attached hereto as Attachment 15.

Section 102 Definitions

For purposes of this Agreement, the following capitalized terms shall have the following meanings:

"Affordable Housing Cost" shall have the applicable meaning set forth in California Health and Safety Code Section 50052.5(b).

"Affiliate" shall mean a KB Home Entity (as defined below) or any corporation, limited liability company, limited partnership or other entity with respect to which a KB HOME Entity owns a controlling interest, is under common control with, or has control over management.

"Agreement Affecting Real Property" shall mean shall mean an instrument substantially in the form attached to this Agreement as Attachment No. 7, which is incorporated herein by this reference.

"Approved Infrastructure and Mitigations" shall mean the actual cost and/or performance of the items set forth in Attachment No. 5 to this Agreement.

"Assignee" shall mean a corporation, joint venture, partnership, limited liability company or similar entity which may be formed, in which KB Home South Bay Inc. has at least a twenty-five percent (25%) interest in such entity and has the lead role in such entity for processing the Entitlements and developing the Improvements. Any such assignment shall be pursuant to an Assignment and Assumption Agreement with Developer, pursuant to which Developer shall assign this Agreement to such Assignee and such Assignee shall assume the obligations of the "Developer" hereunder. Any such assignment shall not release Developer from any liability hereunder. Notwithstanding said assignment, the Construction License (referred to in Section 218 of this Agreement) shall be executed by KB Home South Bay, Inc.

"Assignment and Assumption Agreement" shall mean an instrument substantially in the form attached to this Agreement as Attachment No. 6, which is incorporated herein by this reference.

"Attachment 5B Mitigation Costs" shall mean the approximate cost required to be paid for the Approved Mitigations or any work required in connection therewith, or to remediate any Attachment 5B Matter (as defined in Section 505.e.) relating to the (a) implementation of a plan to exclude and/or relocate the burrowing owl or other protected species from the Site and mitigation of wetlands, if any; (b) payment of in-lieu fees and related costs to the California Department of Fish and Game for the acquisition of replacement habitat, or to an organization providing that service; and (c) protecting, exhuming, securing, transporting, studying and reporting archeological discoveries on the Site.

"Certificate of Completion" shall mean the certificate to be issued by the Agency in accordance with Section 321 of this Agreement.

"City" shall mean the City of Milpitas, California.

"Closing" or "Close of Escrow" shall mean the point in time when the Agency conveys title to all or a portion of the Site to Developer pursuant to this Agreement.

"Closing Date" as to Parcel D shall mean February 19, 2005 or the first business day thereafter. Closing Date as to Parcel C shall mean one hundred eighty (180) calendar days after February 19, 2005. Notwithstanding the foregoing, either Closing Date may be extended as provided in 502.(e). of this Agreement.

"Completion" shall mean the point in time when the Agency issues the Certificate of Completion for the Site pursuant to Section 321 of this Agreement.

"County" shall mean Santa Clara County, the owner of the Site as of the date of this Agreement.

"County's Funds" shall mean the sum of $20,000,000 to be provided by Agency for the purposes set forth in Section 401 hereof.

"Days" shall mean calendar days, provided if the day for performance falls on a weekend or a legal holiday (as defined in the California Civil Code), the time for such performance shall be extended until the next following work day.

"Deposits" shall mean any deposits previously made by Developer to the County or into Escrow pursuant to the County Purchase and Sale Agreement.

"Developer's Parties" shall mean Developer and Developer's consultants, contractors, agents and employees.

"Effective Date" shall mean the date that the governing body of the Agency shall have approved this Agreement and the Agreement has been executed by the last of Developer or Agency.

"Entitlements" shall mean all discretionary approvals and authorizations from the City or any other governmental entity having jurisdiction over the Site, that are necessary and for the development of the Improvements on the Site, including, without limitation, a general plan amendment, specific plan amendment, planned development zoning, architectural and site approval, certification of an environmental impact report, approval of a vesting tentative map, approval of a one or more final subdivision maps, receipt of encroachment permits from the Santa Clara Valley Water District, approval of infrastructure plans and park plan approval.

"Environmental Laws" shall mean and include any of the following as they may be amended from time to time prior to the Close of Escrow: (a) Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601(14); (b) section 311 of the Federal Water Pollution Control Act, 33 U.S.C. 1321; (c) section 1004 and section 3001 of the Resource and Conservation and Recovery Act, 42 U.S.C. sections 6903 and 6921; (d) section 307(a)(1) of the Federal Water Pollution Control Act, 33 U.S.C. 1317(a)(1); (e) section 112 of the Clean Air Act, 42 U.S.C. 7412; (f) the Hazardous Materials Transportation Uniform Safety

Act of 1990, 49 U.S.C. App. 1802(4); (g) California Health and Safety Code; (h) any other federal, state or local laws, statutes, regulations or rules under which materials and wastes, including Hazardous Materials, are, or in the future become, regulated for the protection of health or the environment; and (i) all rules and regulations promulgated under the aforementioned laws.

"Escrow Holder" shall mean First American Title Guaranty Company, 6665 Owens Drive, Pleasanton, CA 94588 or another escrow company mutually acceptable to Agency and Developer. The Escrow Officer at First American Title Guaranty Company is Michelle Chan, phone number _____ and the escrow number is (611990/611655)

Grant Deed" shall mean the instrument by which Agency shall convey fee title to the Site to Developer, Attachment No. 6 to this Agreement.

"Hazardous Materials" shall mean and include the following:

a. a "Hazardous Substance" as defined by Section 9601 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq., or as "Hazardous Waste" as defined by Section 6903 of the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq.;

b. an "Extremely Hazardous Waste," a "Hazardous Waste," or a "Restricted Hazardous Waste," as defined by The Hazardous Waste Control Law under Sections 25115, 25117 or 25122.7 of the California Health and Safety Code, or is listed or identified pursuant to Section 25140 of the California Health and Safety Code;

c. a "Hazardous Material," "Hazardous Substance," "Hazardous Waste," "Toxic Air Contaminant," as defined by the California Hazardous Substance Account Act, law pertaining to the underground storage of Hazardous Materials, hazardous materials release response plans, or the California Clean Air Act under Sections 25316, 25281, 25501, 25501.1 or 39655 of the California Health and Safety Code;

d. "Oil" or a "Hazardous Substance" listed or identified pursuant to Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. 1321;

e. "Hazardous Waste," "Extremely Hazardous Waste," or an "Acutely Hazardous Waste" listed or defined pursuant to Chapter 11 of Title 22 of the California Code of Regulations Sections 66261.1-66261.126;

f. chemicals listed by the State of California under Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986, as a chemical known by the State to cause cancer or reproductive toxicity pursuant to Section 25249.8 of the California Health and Safety Code;

g. a material that, due to its characteristics or interaction with one or more other substances, chemical compounds, or mixtures, material damages or threatens to materially damage, health, safety, or the environment, or is required by any law or public agency to be

remediated, including remediation which such law or government agency requires in order for the property to be put to any lawful purpose;

h. any material whose presence would require remediation pursuant to the guidelines set forth in the State of California Leaking Underground Fuel Tank Field Manual, whether or not the presence of such material resulted from a leaking underground fuel tank;

i. pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 et seq.;

j. asbestos, PCBs, and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. 2601 et seq.;

k. any radioactive material including, without limitation, any "source material," "special nuclear material," "by-product material," "low-level wastes," "high-level radioactive waste," "spent nuclear fuel" or "transuranic waste," and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act, 42 U.S.C. 2011 et seq., the Nuclear Waste Policy Act, 42 U.S.C. 10101 et seq., or pursuant to the California Radiation Control Law, California Health and Safety Code 114960 et seq.;

l. Hazardous Materials regulated under the Occupational Safety and Health Act, 29 U.S.C. 651 et seq., or the California Occupational Safety and Health Act, California Labor Code 6300 et seq.; and/or

m. materials, substances and wastes regulated under the Clean Air Act, 42 U.S.C. 7401 et seq. or pursuant to The California Clean Air Act, Sections 3900 et seq. of the California Health and Safety Code.

"Improvements" shall mean the residential units, traffic improvements, infrastructure, public parks and private recreational amenities to be constructed on and off the Site by Developer, including but not limited to the following: 315 podium condominiums east of Abel Street, on the portion of the Site referred to herein as Parcel "C", 85 of which condominiums shall be occupied by and sold exclusively to qualified Moderate Income households at an Affordable Housing Cost in accordance with this Agreement; 165 single-family detached homes and 203 flats and townhomes north of the Elmwood Correctional Facility on the portion of the Site referred to herein as Parcel "D", of which 25 of the townhomes shall be occupied by and sold exclusively to qualified Moderate Income households at an Affordable Housing Cost in accordance with this Agreement; approximately 7 acres of public parks, including 2.7 acres to be dedicated to the City (1.6 acres of park on Parcel "C" and 1.1 acres of park on Parcel "D") and 4.3 acres to be developed on the Hetch Hetchy right-of-way; and 10 acres to be developed as two private park/recreation areas, including one within and/or adjacent to Parcel "C" and one within and/or adjacent to Parcel "D"; all as described in the Entitlements. Provided, however, that the precise number of housing units of all types is subject to adjustment to reflect the actual number of housing units approved as part of the Entitlements.

"KB HOME Entity" shall mean any wholly-owned subsidiary of KB Home South Bay Inc., or any wholly-owned subsidiary in a chain of wholly-owned subsidiaries, or an Affiliate.

"Legal Description" shall mean the legal description of the Site attached to this Agreement as Attachment No. 2 which is incorporated herein by this reference.

"Mortgagee" shall mean any maker of a Permitted Mortgage Loan to Developer.

"Moderate Income Household" shall have the meaning set forth in California Health and Safety Code Section 50093.

"Parcel" shall mean Parcel "C" or Parcel "D" as the context may require.

"Parcel "C"" shall mean that portion of the Site located to the east of Abel Street, as depicted on the Site Map attached hereto as Attachment No. 1 and identified in the Legal Description attached hereto as Attachment No. 2.

"Parcel "D"" shall mean that portion of the Site located to the north of the Hetch Hetchy right of way, as depicted on the Site Map attached hereto as Attachment No. 1 and identified in the Legal Description attached hereto as Attachment No. 2.

"Park Escrow" shall mean a portion of the County's Funds in the amount of up to One Million Five Hundred Thousand Dollars ($1,500,000), which shall be placed by County into a separate account acceptable to the City, for purposes of applying the amount of such funds, plus earned interest thereon, to the payment of sums due under the PUC Agreement (as defined in paragraph c. of Section 201, below).

"Permits" shall mean demolition permits, grading permits, building permits and any other permits required by the City or any other governmental agency having jurisdiction to develop the Improvements on the Site in accordance with the Entitlements.

"Permitted Mortgage" shall mean a conveyance of a security interest in the Site, or any portion thereof, to a Mortgagee to secure a loan to finance the acquisition and development of the Site, or any portion thereof, or any conveyance of a security interest in the Site to secure any refinancing to the extent it repays a Permitted Mortgage Loan, or the conveyance of title to the Mortgagee or its assignee in connection with a foreclosure or a deed in lieu of foreclosure of such loan.

"Permitted Mortgage Loan" shall mean the obligations secured by a Permitted Mortgage.

"Permitted Transfer" shall mean an assignment of this Agreement and, after Escrow Closing, conveyance of the Site or a portion thereof concurrently with such assignment, to an Assignee. Any such assignment shall not release Developer from any liability hereunder. Notwithstanding said assignment, the Construction License (referred to in Section 218 of this Agreement) shall be executed by KB Home South Bay Inc. Except for any such assignment, Developer may not assign its rights or delegate its duties with regard to this Agreement or the Site prior the Escrow Closing except with the prior written consent of Agency, which Agency may withhold in Agency's discretion. Developer has been selected, in part, based on its reputation in the community, on its experience with similar transactions, on its relationship with affordable housing developers and on the Agency's analysis of Developer's business practices and ability to perform. After the Escrow Closing, Developer may assign its rights to an

affordable housing developer reasonably acceptable to the Agency's Executive Director, for the sole purpose of implementing the provisions of Sections 408 and 409, and any such assignment shall be a "Permitted Transfer".

"Pre-Existing Hazardous Materials" shall mean any Hazardous Materials that were present on or under the Site prior to the Close of Escrow.

"Purchase Price" shall mean the amount payable by Developer to the County for the Site, which is equal to $57,750,000, comprised of $17,750,000 for Parcel "C" and $40,000,000 for Parcel "D", which is equal to the fair market price for the Site.

"Redevelopment Plan" shall mean the Redevelopment Plan for the Milpitas Redevelopment Project No. 1, which was approved and adopted in 1976 by the City Council of the City of Milpitas by Resolution No. 192, as amended from time-to-time.

"Schedule of Performance" shall mean the document attached to this Agreement as Attachment No. 3 which is incorporated herein by this reference.

"Site" shall mean the real property described in Section 104 hereof.

"Site Map" shall mean the document which is attached to this Agreement as Attachment No. 1 which is incorporated herein by this reference.

"Special Conditions" shall mean the conditions set forth in Attachment No. 14 which is incorporated herein by this reference.

"Title Company" shall mean First American Title Insurance Company, or another title insurance company mutually acceptable to Agency and Developer.

"Title Insurance Policy" shall mean and include a CLTA standard coverage owner's policy of title insurance in favor of Developer insuring the Developer's fee title in the Site, in the liability amount of the Purchase Price, subject only to the Permitted Exceptions (the "Owner's Title Policy").

Section 103 The Redevelopment Plan

a. This Agreement is subject to and in furtherance of the provisions of the Redevelopment Plan for the Milpitas Redevelopment Project No. 1, which is incorporated herein by reference and made a part hereof as though fully set forth herein.

b. Any amendments hereafter to the Redevelopment Plan which change the uses or development permitted on the Site as proposed in this Agreement, or otherwise change the restrictions or controls that apply to the Site, or otherwise affect the Developer's obligations or rights with respect to the Site, shall require the written consent of the Developer. Amendments to the Redevelopment Plan that do not affect the Site shall not require the consent of the Developer.

Section 104 The Site

a. The "Site" consists of Parcel "C" and Parcel "D" and is located in the Milpitas Redevelopment Project No. 1, and is referred to generally as the "Elmwood" residential development. The Site is depicted on the Site Map attached hereto as Attachment No. 1. The legal description of the Site is set forth in the Legal Description attached hereto as Attachment No. 2. The Site is currently owned by the County.

b. Prior to Escrow Closing, the County shall cause the Site to be divided into legally subdivided parcels in substantially the configuration shown on Attachment No. 1 pursuant to a meets and bounds description, subdivision map, parcel map or lot line adjustment. Such meets and bounds description, subdivision map, parcel map or lot line adjustment shall be deemed approved when the City has approved the subdivision map, parcel map or lot line adjustment on terms and conditions satisfactory to Developer in its sole and absolute discretion and, if applicable, all time periods for filing an appeal of such City approval have passed without such an appeal having been filed, or if an appeal has been filed, it has been resolved on terms and conditions satisfactory to Developer in its sole and absolute discretion. The parties acknowledge that Parcel "C" is currently a separate legal parcel. If a subdivision map, parcel map or lot line adjustment has not been approved prior to the last day scheduled for the Closing Date, County may convey Parcel "D" to Developer pursuant to a metes and bounds description; provided, however, Developer shall only be required to accept conveyance of Parcel "D" by a metes and bound legal description if (i) County has made such dedications as the City may require, if any, under applicable law in connection with the metes and bounds conveyance (which dedications shall be acceptable to Developer in its sole and absolute discretion), and (ii) if necessary, Agency has successfully refuted any attempt under Government Code section 66428(a)(2) to show that public policy requires a parcel map for Parcel "D", and (iii) Developer is able to obtain the Title Policy based on such metes and bound description. Developer shall provide Agency with a survey sufficient to permit conveyance and title insurance if a metes and bounds description is required because the subdivision map, parcel map or lot line adjustment has not been approved prior to the Escrow Closing.

Section 105 The Agency

a. The Agency is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under Chapter 2 of the Community Redevelopment Law of the State of California.

b. The address of the Agency for purposes of receiving notices pursuant to this Agreement is as follows:

Redevelopment Agency of the City of Milpitas
Milpitas City Hall
455 E. Calaveras Boulevard
Milpitas, California 95035-5479
Attention: Executive Director
Facsimile No.: (408) 586-3056
Telephone No.: (408) 586-3050

With a copy to:

Steven T. Mattas, General Counsel
Meyers, Nave, Riback, Silver & Wilson
555 12th Street, Suite 1500
Oakland, California 94607
Facsimile No.: (510) 444-1108
Telephone No.: (510) 808-2000

c. "Agency" as used in this Agreement includes the Redevelopment Agency of the City of Milpitas, California and any assignee or successor to its rights, powers and responsibilities.

Section 106 Developer

a. The Developer is KB Home South Bay Inc., a California corporation. The address of Developer for purposes of receiving notices pursuant to this Agreement is as follows:

KB Home South Bay Inc.
6700 Koll Center Parkway, Suite 200
Pleasanton, California 94566
Attention: Mr. Jeff McMullen
Facsimile No.: (925) 750-1800
Telephone No.: (925) 750-1714

With a copy to:

KB Home
10990 Wilshire Boulevard
Los Angeles, California 90024
Attention: Ross A. Kay, Esq.
Facsimile No.: (310) 231-4280
Telephone No.: (310) 231-4284

b. Whenever the term "Developer" is used herein, such term shall include KB Home South Bay Inc. (the Developer as of the date hereof), or any assignee of or successor to its rights, powers and responsibilities permitted by this Agreement.

c. Agency and Developer acknowledge and agree that at or prior to the Closing, Developer shall have the right to assign its interests in this Agreement and the Site to the Assignee, but no such assignment shall be required. In the event of such assignment, on or prior to the Closing, Agency, Developer and Assignee shall execute an Assignment and Assumption Agreement, substantially in the form attached to this Agreement as Attachment No. 6, which is incorporated herein by this reference.

Section 107 Assignments and Transfers

a. Developer represents and agrees that its undertakings pursuant to this Agreement are for the purpose of redevelopment of the Site and not for speculation in land holding. Developer further recognizes that the qualifications and identity of Developer are of particular concern to the City and the Agency, in light of the following: (1) the importance of the redevelopment of the Site to the general welfare of the community; and (2) the public assistance that has been made available by law and by the government for the purpose of making such redevelopment possible. Developer further recognizes that it is because of such qualifications and identity that the Agency is entering into the Agreement with the Developer. Therefore, no voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein.

b. Prior to Completion, Developer shall not assign all or any part of this Agreement, or any interest herein, without the prior written approval of the Agency, except that a "Permitted Transfer" shall not require Agency approval.

c. Except for a Permitted Transfer, prior to the Close of Escrow, Developer shall not assign all or part of this Agreement or any of its rights to the Site, without the prior written consent of the Agency, which the Agency may grant, withhold, condition in its sole discretion.

d. Except for a Permitted Transfer, after the Close of Escrow, but before Completion, Developer shall not assign all or part of this Agreement or the Site, or any portion thereof or interest therein, without the prior written consent of the Agency, which the Agency shall reasonably grant, provided the Agency Executive Director reasonably determines that the proposed transferee has the experience and financial capability necessary to perform Developer's obligations hereunder.

e. For the reasons cited above, the Developer represents and agrees for itself and any successor in interest that prior to Completion, and without the prior written approval of the Agency, which the Agency shall reasonably grant, there shall be no significant change in the identity of the parties in control of the Developer, by any method or means, except Permitted Transfers. The parties also agree that if KB Homes South Bay merges with or is acquired by or acquires another company that such action would not require prior Agency approval.

f. Notwithstanding anything to the contrary contained in this Section, Developer may nominate a third party (the "Nominee") to take title to the Property at the Closing, subject to the following: (a) as of the Close of Escrow, Developer shall have entered into an option agreement pursuant to which Developer has the option to purchase the Property from the Nominee, (b) Developer and the Nominee shall each be beneficiaries of the representations and warranties and indemnities, if any, of Agency in this Agreement, (c) Developer shall provide Agency and County with a copy of the applicable nomination document, and (d) such nomination shall not release Developer from its obligations under this Agreement and all of the pre-Closing and post-Closing obligations of the County, Agency and Developer shall not be affected by such nomination or assignment and, pursuant to Developer's

option agreement with the Nominee, Developer shall be responsible for the development of the Property while the option agreement remains in effect.

PART 2 ACQUISITION AND DISPOSITION OF THE SITE

Section 201 Acquisition of the Site by Developer

a. Reference is hereby made to the County Purchase and Sale Agreement dated August 19, 2003, by and between the Developer and the County. Developer shall purchase the Site from the County or the Agency as Assignee of the County. Subject to the terms and conditions of this County Purchase and Sale Agreement, Developer shall exercise its rights pursuant to the County Purchase and Sale Agreement and acquire title to the Site from the County.

b. Purchase Price. Developer shall pay the Purchase Price for Parcel "C" upon the Close of Escrow for Parcel "C". Developer shall pay the Purchase Price for Parcel "D" upon the Close of Escrow for Parcel "D". The Purchase Price shall be net of any deposits held in Escrow and paid to County at the Close of Escrow for the respective Parcel. The Purchase Price is allocated between Parcel "C" and Parcel "D" as follows:

Parcel "C"	$17,750,000
Parcel "D"	$40,000,000

c. Park and Common Area Requirement. The City has required, as part of the Entitlements, the dedication and development of approximately seven acres of improved public parks and park/common area with regard to the Site. The County is negotiating an agreement (the "PUC License Agreement") with the San Francisco Public Utilities Commission ("PUC") pursuant to which the surface of the Hetch Hetchy right of way located between the Elmwood facility and Parcel "D" (that contains approximately 4.3 acres) can be developed with park improvements and used for park purposes and applied to the City's 7 acre park requirement. Developer has prepared and delivered to the Agency a proposed park plan ("Proposed Park Plan") for the Hetch Hetchy property that is acceptable to the Agency and Developer and preliminarily acceptable to the City. The current draft of the PUC License Agreement is consistent with the Proposed Park Plan. Developer shall be responsible for the cost of the park improvements on the Hetch Hetchy Land required by the Entitlements in accordance with the Proposed Park Plan. It shall be a condition precedent to Developer's obligations under this Section 201[c] that (i) the County and the PUC reach agreement upon and execute the PUC License Agreement, (ii) that the County assign all of its right, title and interest under the PUC License Agreement to the City and (iii) that the City and Developer enter into a written agreement that the Hetch Hetchy right of way land shall be applied to the City's park requirements for the development of the Site with the Improvements. Prior to the assignment of the PUC License Agreement, the Agency will accept a final plan substantially like the Proposed Park Plan. In the event the PUC does not approve a final plan and license agreement substantially like the Proposed Park Plan, both in terms of acreage and amenities, and if the park land requirement can be satisfied through payment of in-lieu park fees, the County Purchase and Sale Agreement provides that the funds ($1,500,000) that otherwise would be used to establish the Park Escrow may be applied to the payment of the in-lieu park fees, and the County may (but is not required to) pay all additional in-lieu park fees.

If the County declines to pay in-lieu park fees, the Developer may elect either to pay the fees or to terminate this DDA and the County Purchase and Sale Agreement. In addition, in the event the PUC does not approve the Final Plan and License Agreement substantially like the proposed Park Plan and either the County pays the additional in-lieu park fees, the Developer shall pay the City for the costs of the amenities that would have been provided in the Proposed Park Plan.

Section 202 Escrow

a. The Agency and Developer shall open an escrow for conveyance of the Site with the Title Company (the "Escrow Holder") as Escrow Holder. Parts 1 and 2 of this Agreement constitute the joint escrow instructions of the Agency and the Developer, and a duplicate original of this Agreement shall be delivered to the Escrow Holder upon the opening of the escrow. The Agency and the Developer shall provide such additional escrow instructions consistent with this Agreement as shall be necessary. The Escrow Holder hereby is empowered to act under such instructions, and upon indicating its acceptance thereof in writing, delivered to the Agency and to the Developer within 5 days after opening of the escrow, the Escrow Holder shall carry out its duties as Escrow Holder hereunder.

b. The parties understand they may be required to execute additional standard form escrow instructions required by the Escrow Holder ("General Instructions"). In the event of a conflict between this Agreement and any such General Instructions, this Agreement shall control. The parties agree, however, that they will refuse to sign General Instructions which (1) purport to relieve the Escrow Holder of liability for negligence or intentional wrong-doing; (2) excuse the Escrow Holder from strict compliance with each and all of the provisions of this document and the General Instructions; or (3) purport to authorize the Escrow Holder to follow the instructions or directive of any person not a direct signatory party to this Agreement. Any amendment to the escrow instructions shall be in writing and signed by both the Agency and the Developer. At the time of any amendment the Escrow Holder shall agree to carry out its duties as Escrow Holder under such amendment.

c. All communications from the Escrow Holder to the Agency or the Developer shall be directed to the addresses set forth in Sections 105 and 106 of this Agreement, and in the manner set forth in Section 601 of this Agreement for notices between the parties hereto.

Section 203 Form of Deed The Grant Deed which conveys the Site to Developer shall be in a form mutually acceptable to the County, Agency and the Developer consistent with this Agreement and substantially in the form attached hereto and incorporated herein as Attachment No. 4.

Section 204 Land Use Requirements It is the responsibility of the Developer, without cost to Agency, to ensure that zoning of the Site and all applicable City land use requirements will be, at the Closing, such as to permit development of the Site and construction of the Improvements and the use, operation and maintenance of such Improvements in accordance with the provisions of this Agreement. Nothing contained herein shall be deemed to entitle Developer to any City of Milpitas permit or other City approval necessary for the development of the Site, or waive any applicable City requirements relating thereto. This Agreement does not (a) grant any land use entitlement to Developer, (b) supersede, nullify or amend any condition which may

be imposed by the City of Milpitas in connection with approval of the development described herein, (c) guarantee to Developer or any other party any profits from the development of the Site, or (d) amend any City laws, codes or rules. This is not a Development Agreement as provided in Government Code Section 65864. Without cost to Agency, Agency shall provide appropriate technical assistance to Developer in connection with Developer's obtaining all necessary entitlements, permits and approvals for the construction of the Improvements.

Section 205 Preliminary Work by the Developer

a. Access and Testing. Agency shall give Developer written notice promptly upon Agency's obtaining possession of any portion of the Site to be owned by the Agency or City ("Agency Portion") ("Notice of Possession). After such Notice of Possession until the Close of Escrow, Developer, its agents and employees and contractors shall have the right, upon twenty-four (24) hours advance written notice to Agency and City, to enter the Agency Portion of the Site for the purposes of conducting such investigations, inspections and tests of the Agency Portion of the Site as Developer deems necessary to obtain all Entitlements and Permits to enable Developer to develop the Agency Portion of the Site as contemplated by this Agreement and to determine the condition and suitability of the Agency Portion of the Site. Notwithstanding the foregoing, Developer shall not be permitted to undertake any intrusive or destructive testing of the Agency Portion of the Site, including deep borings in the Agency Portion of the Site or other intrusive testing, except with City and Agency's written consent thereto, which consent City and Agency shall not withhold unreasonably. If Developer desires to engage in deep borings or other invasive testing on the Agency Portion of the Site, City and Agency shall have the right to approve the contractor performing the work, may review the plan before work begins, may observe the work and, if City or Agency desires, have samples tested by an independent laboratory. City or Agency's approval of any intrusive or invasive testing, any contractor performing the same and any plan for such testing shall be give or denied within five (5) days of Developer's request. City or Agency's failure to give or deny consent within said five (5) day period shall be deemed City and Agency's approval thereof. Developer shall use care and consideration in connection with all of its inspections or tests. Developer shall restore the Agency Portion of the Site as near as reasonably possible to its condition prior to any intrusive or invasive tests and/or inspections. Developer shall deliver to City and Agency, within five (5) days of Developer's receipt thereof, copies of any final reports relating to any inspections, tests or investigations of the Agency Portion of the Site performed by or on behalf of City and Agency. Prior to any entry onto the Agency Portion of the Site, Developer shall secure and maintain: (a) a comprehensive general liability and property damage policy in an amount of not less than One Million Dollars ($1,000,000) and, with a deductible (or self-insured retention) in an amount reasonably acceptable to Agency, which will cover the activities of Developer and its agents and consultants on the Agency Portion of the Site, which shall (i) name City and Agency an additional insured thereunder, (ii) contain a cross-liability endorsement and (iii) provide that the insurance maintained by Developer shall be primary and non-contributing with any other insurance available and (b) worker's compensation and employer's liability insurance in accordance with the provisions of California law. Developer shall provide a certificate of insurance to Agency evidencing the insurance required herein. Developer hereby agrees to indemnify, defend (with counsel reasonably satisfactory to Agency) and hold City and Agency, their employees, agents, and representatives harmless from and against any and all loss, expense, claim, damage and injury to person or property resulting from the acts of Developer,

Developer's agents, contractors and/or subcontractors and/or the contractors or subcontractors of such agents on the Agency Portion of the Site in connection with the performance of any investigation or other activities upon the Property as contemplated herein. The foregoing indemnity, defense and hold harmless obligations do not apply to (aa) any loss, liability, cost, claim, damage, injury or expense to the extent arising from or related to the willful misconduct or negligent acts or negligent omissions of City or Agency, (bb) any diminution in value in the Agency Portion of the Site arising from or relating to matters discovered by Developer during its investigation of the Agency Portion of the Site, (cc) any latent defects in the Agency Portion of the Site discovered by Developer, and (dd) the release or spread of any Hazardous Materials which are discovered (but not deposited) on or under the Agency Portion of the Site by Developer so long as Developer uses care and consideration in performing its investigation. Developer's indemnity obligations under this Section 205 shall survive the termination of this Agreement and Escrow Closing.

Section 206 Indemnity

a. As a material part of the consideration for this Agreement, and to the maximum extent permitted by law, the Developer agrees to and shall defend, with counsel reasonably acceptable to Agency, indemnify and hold harmless the Agency, the City and their respective officers, employees, contractors and agents from and against all claims, liability, loss, damage, costs or expenses (including reasonable attorneys' fees, court costs and litigation costs and fees of expert witnesses) whatsoever caused to any person or the property of any person, which shall occur on or adjacent to the Site or in connection with any activities of the Developer or its officers, employees, contractors or agents, and which results or arises from or in any way connected with the following, provided that Developer shall not be responsible for (and such indemnity shall not apply to) any the gross negligence or willful misconduct of the Agency, the City or their respective officers, employees, contractors or agents:

1. The existence, release, presence or disposal on, in, under, about or adjacent to the Site of any Hazardous Materials except:

(a) Pre-Existing Hazardous Materials;

2. Developer's development, marketing, sale or use of the Site in any way;

3. Any plans or designs for improvements prepared by or on behalf of Developer, including without limitation any errors or omissions with respect to such plans or designs;

4. Construction, installation or development of any improvements on the Site by Developer, any assignee or successor to Developer, and their respective contractors and subcontractors;

b. To the extent permitted by law, Developer shall defend the Agency and City and their respective agents and employees harmless from liability from any and all actions, claims, damages, injuries, challenges and/or costs of liabilities arising from the approval of any and all entitlements or permits for the Improvements by the City and/or the Agency. Developer

further agrees that such indemnification and hold harmless shall include all defense-related fees and costs associated with the defense of the Agency or City by counsel selected by the Developer which counsel shall be reasonably acceptable to the Agency and City.

c. The foregoing indemnities shall not terminate upon the Close of Escrow but shall survive all applicable causes of action, except if Agency exercises its rights pursuant to Section 511 of this Agreement.

Section 207 Representations of the Agency

Agency hereby represents and warrants to Developer that, except as otherwise disclosed to Developer, the following statements are true:

a. Permitted Exceptions. Except for the County Agreement and the Permitted Exceptions and any agreements that have been consented to in writing by Developer, there are no leases, licenses, contracts or other agreements relating to the Site that have been approved by the Agency that will be in force after the Escrow Closing.

b. Legal Proceedings. Except for (i) City actions to increase the limit on the tax increment revenue that may be allocated to the Agency and to increase the limitation on incurrence of Agency bonded indebtedness, and actions related thereto and (ii) County's action to remove from title an Amended Order entered October 15, 1982, by the Superior Court of the State of California (which actions may appear on title), there is no pending (nor has Agency received any written notice of any threatened) action, litigation, condemnation or administrative action or other proceeding against the Site or that would materially and adversely affect Agency's interest therein.

c. Compliance With Law. To Agency's knowledge, Agency has not received written notice from any governmental authority having jurisdiction over the Site to the effect that the Site are not in compliance with applicable laws and ordinances (including any laws concerning the use, generation, handling, disposal or storage of Hazardous Materials).

d. Notice From Insurers. To Agency's knowledge, Agency has not received any notice from any insurer of defects or conditions relating to the Site that must be corrected.

e. Authority. This Agreement and all agreements, instruments and documents herein provided to be executed or to be caused to be executed by Agency are and at Escrow Closing will be duly authorized, executed and delivered by and are binding upon Agency.

PART 3 DEVELOPMENT OF THE SITE

Section 301 Obligation to Construct the Improvements

a. The Site shall be developed in accordance with and within the limitations established in the Entitlements as approved by the City of Milpitas. Development of the Site shall also be subject to the Special Conditions set forth in Attachment No. 14.

b. Within the time provided therefor in the Schedule of Performance, and subject to Section 802 hereof, Developer shall commence and complete construction of the Improvements on the Site (or cause such construction to be commenced and completed) in accordance with the Entitlements and all permits issued by the City for the Improvements.

Section 302 Schedule of Performance

Each party to this Agreement shall use diligent and commercially reasonable efforts to perform the obligations to be performed by such party pursuant to this Agreement within the respective times provided in this Agreement and Attachment No. 3, subject to Section 802, and if no such time is provided, within a reasonable time, designed to permit the Closing to occur not later than the Scheduled Closing Date. All times of performance shall be subject to amendment from time to time upon the mutual agreement of the Agency Executive Director and Developer.

Section 303 Commencement and Completion of Construction

After the Closing, the Developer shall promptly begin and thereafter diligently prosecute to completion the construction of the Improvements and the development thereof as provided in the Entitlements, Attachement No. 3 and permits issued by the City. The Developer shall use its diligent and commercially reasonable efforts to begin and complete all construction and development within the times specified in the Schedule of Performance, subject to Section 802, with such reasonable extensions of said dates as may be granted by the Agency.

Section 304 Construction Pursuant to Plans and Laws

a. Developer shall cause the Improvements to be constructed in conformance with the construction drawings approved by the City in issuing permits, as modified by any change orders permitted or approved by the Agency and the City.

b. Developer shall cause all work performed in connection with the Improvements to be performed in compliance with (i) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter, and (ii) all directions, rules and regulations of any fire marshal, health officer, building inspection, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by the City or any other governmental agency having jurisdiction, and Developer shall be responsible for the procurement and maintenance thereof, as may be required of Developer and all entities engaged in work on the Improvements.

c. All construction work and professional services shall be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of California.

Section 305 Nondiscrimination and Equal Opportunity

During the construction of the Improvements, Developer shall not discriminate against any employee or applicant for employment on any basis prohibited by law and Developer shall provide equal opportunity in all employment practices.

Section 306 Reports, Records and Inspections

a. Until such time as Developer is entitled to issuance of a Certificate of Completion, Developer shall submit to the Agency a written progress report when and as reasonably requested by the Agency, but not more frequently than once every quarter. The report shall be in such form and detail as may be reasonably requested by the Agency and shall include a reasonable number of construction photographs (if requested) taken since the last report by the Developer.

b. Developer shall maintain complete, accurate, and current records pertaining to the portion of Improvements that include the affordable housing units or the Improvements paid for with Agency or County funds for a period of five (5) years after the creation of such records, and shall permit any duly authorized representative of the Agency to inspect and copy records, including records pertaining to income and household size of tenants of the Improvements, during regular business hours. This section does not apply to market rate residential units or private infrastructure improvements. Records must be kept accurate and current.

c. Developer shall permit and facilitate, and shall require its contractors to permit and facilitate, observation and inspection of the Improvements by the Agency and by public authorities during regular business hours for the purposes of determining compliance with this Agreement. Representatives of the Agency and the City shall have the reasonable right of access to the Site, upon twenty-four (24) hours' written notice to Developer (except in the case of an emergency, in which case Agency shall provide such notice as may be practical under the circumstances), without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the Improvements. Such representatives of the Agency or the City shall be those who are so identified in writing by the Executive Director of the Agency. Agency representatives shall comply with reasonable site access regulations promulgated by developer.

Section 307 Construction Responsibilities

a. Developer shall take such steps as may be necessary to cause the work to be performed so that commencement and completion of construction will take place in accordance with this Agreement including Attachment No. 3. The cost of developing the Site and constructing the Improvements, including any offsite or onsite improvements required by the City in connection therewith, shall be the responsibility of the Developer, without any cost to Agency, except as specifically provided otherwise in this Agreement. Developer shall be responsible for obtaining and complying with any condition relating to any and all permits which may be required by any governmental agency having jurisdiction over the work to be performed.

b. Developer shall be solely responsible for all aspects of Developer's conduct in connection with the Improvements, including (but not limited to) the quality and suitability of the Construction Drawings and all construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers, subject to the County's performance of its obligations under the County Purchase and Sale Agreement. Developer shall not be responsible for liabilities that may arise from the design of Improvements when said Improvements are designed by the City or Agency. Any review or inspection undertaken by the Agency with reference to the Improvements is solely for the purpose of determining whether Developer is properly discharging its obligations to the Agency, and should not be relied upon by Developer or by any third parties as a warranty or representation by the Agency as to the quality of the design or construction of the Improvements.

Section 308 Mechanics Liens, Stop Notices, and Notices of Completion

a. If any claim of lien is filed against the portion of the Improvements that includes the affordable housing units or Improvements paid for with County Funds, or a stop notice is served on the Agency or other third party in connection with the Improvements, then Developer shall, within twenty (20) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the party entitled thereto a surety bond in sufficient form and amount, or provide other assurances satisfactory to the Agency that the claim of lien or stop notice will be paid or discharged.

b. If Developer fails to discharge any lien, encumbrance, charge, or claim in the manner required in paragraph a., then in addition to any other right or remedy, the Agency may (but shall be under no obligation to) , upon ten (10) days' prior written notice to Developer, discharge such lien, encumbrance, charge, or claim at Developer's expense. Alternately, the Agency may require Developer, upon ten (10) days prior written notice, to immediately deposit with the Agency the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The Agency may use such deposit to satisfy any claim or lien that is adversely determined against Developer. The Developer shall file a valid notice of cessation or notice of completion upon cessation of construction on the Improvements for a continuous period of thirty (30) days or more, and take all other reasonable steps to forestall the assertion of claims or lien against the Improvements. The Redevelopment Agency may (but has not obligation to) record any notices of completion or cessation of labor, or any other notice that the Redevelopment Agency deems necessary or desirable to protect its interest in the Improvements.

Section 309 Reserved

Section 310 Local, State and Federal Laws

a. The Developer shall carry out the construction of the improvements on the Site in conformity with all applicable laws, including all applicable federal and state labor standards (including, with respect to any work involving the Improvements County Funds ("Project'), the requirement to pay state prevailing wages, if applicable).

b. For purposes of this Section 310, the term "Project" means all works of improvement for which Developer is reimbursed from County or Agency's funds. Developer shall pay prevailing wage (as defined in California Labor Code Section 1771) for any work or improvement hereunder only for the Project. Developer hereby agrees that Developer shall have the obligation to provide any and all disclosures or identifications required by Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other similar law. Developer shall indemnify, protect, defend and hold harmless the Agency, City and their respective officers, employees, contractors and agents, with counsel reasonably acceptable to Agency and City, from and against any and all loss, liability, damage, claim, cost, expense, and/or "increased costs" (including reasonable attorneys fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development, construction (as defined by applicable law) and/or operation of the Project, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (1) the noncompliance by Developer of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, the requirement to pay state prevailing wages); (2) the implementation of Section 1781 of the Labor Code, as the same may be enacted, adopted or amended from time to time, or any other similar law; and/or (3) failure by Developer to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other similar law.

c. It is agreed by the parties that, in connection with the development, construction (as defined by applicable law) and operation of the Project on the Property, including, without limitation, any and all public works (as defined by applicable law), Developer shall bear all risks of payment or non-payment of state prevailing wages and/or the implementation of Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, and/or any other similar law. "Increased costs" as used in this Section shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time.

d. The foregoing indemnity shall survive termination of this Agreement and shall continue after Completion.

Section 311 City and Other Governmental Agency Permits

Before commencement of construction or development of any buildings, structures or other work of improvement upon any portion of the Site, the Developer shall, at its own expense, obtain or cause to be obtained, any and all permits which may be required by the City or any other governmental agency affected by such construction, development or work.

Section 312 Disclaimer of Responsibility by Agency

The Agency neither undertakes nor assumes nor will have any responsibility or duty to Developer or to any third party to review, inspect, supervise, pass judgment upon or inform Developer or any third party of any matter in connection with the development or construction of the improvements on the Site, whether regarding the quality, adequacy or suitability of the plans, any labor, service, equipment or material furnished to the Site, any person furnishing the same,

or otherwise. Developer and all third parties shall rely upon its or their own judgment regarding such matters, and any review, inspection, supervision, exercise of judgment or information supplied to Developer or to any third party by the Agency in connection with such matter is for the public purpose of redeveloping the Site, and neither Developer (except for the purposes set forth in this Agreement) nor any third party is entitled to rely thereon. The Agency shall not be responsible for any of the work of construction, improvement or development of the Site.

Section 313 Taxes, Assessments, Encumbrances and Liens

Developer shall pay when due all real estate taxes and assessments assessed and levied on or against the Site subsequent to the Close of Escrow. In addition, Developer shall remove, or shall have removed, any levy or attachment made on title to the Site (or any portion thereof), or shall assure the satisfaction thereof within a reasonable time but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to prohibit the Developer from contesting the validity or amount of any tax assessment, encumbrance or lien, nor to limit the remedies available to the Developer in respect thereto. The covenants of the Developer set forth in this Section 314, as they relate to the Site, including the Site, shall remain in effect only until the issuance of a Certificate of Completion by the Agency.

Section 314 Prohibition against Transfer

a. In the absence of a specific written agreement by the Agency, and except as otherwise provided in this Agreement, no sale, transfer, conveyance or assignment of this Agreement or Developer's interest in the Site (or any portion thereof), or approval by the Agency of any such sale, transfer, conveyance or assignment, shall be deemed to relieve the Developer or any other party from any obligations under this Agreement.

b. The prohibitions set forth in this Section 314 shall remain in effect only until the issuance of a Certificate of Completion.

Section 315 No Encumbrances Except Permitted Mortgages

a. Notwithstanding Section 314, upon and after the Closing, Developer shall have the right to encumber the Site with Permitted Mortgages, but only for the purpose of securing loans of funds to be used for financing the acquisition of the Site and construction of the Improvements, and other expenditures necessary and appropriate to develop the Site under this Agreement ("Permitted Financing Purposes"). Prior to Completion: (i) Developer shall not have any authority to encumber the Site for any purpose other than Permitted Financing Purposes; and (ii) the Developer shall notify the Agency in advance of any proposed financing. A Permitted Mortgagee of a Permitted Mortgage Loan shall not be bound by any amendment, implementation agreement or modification to this Agreement subsequent to its approval without such lender giving its prior written consent.

b. In any event, the Developer shall promptly notify the Agency of any mortgage created or attached to the Site whether by voluntary act of the Developer or otherwise.

c. The words "mortgage" and "deed of trust" as used herein include all other appropriate modes of financing real estate acquisition, construction and land development.

d. The requirements of this Section 315 shall not apply following Completion.

Section 316 Permitted Mortgagee Not Obligated to Construct Improvements

A Mortgagee shall not be obligated by the provisions of this Agreement to construct or complete the Improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed or construed to permit, or authorize any such lender to devote the Site to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

Section 317 Rights of Mortgagees

Whenever the Agency shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in completion of construction of the Improvements, the Agency shall at the same time deliver to each Mortgagee of record a copy of such notice or demand. Each such Mortgagee shall (insofar as the rights of the Agency are concerned) have the right at its option within ninety (90) days after the receipt of the notice, to cure or remedy, or commence to cure or remedy, any such default and to add the cost thereof to the security interest debt and the lien of its security interest. If such default shall be a default which can only be remedied or cured by such Mortgagee upon obtaining possession of the Site, the right to cure within 90-days referred to above shall be satisfied if such Mortgagee seeks to obtain possession with diligence and continuity through a receiver or otherwise, and remedies or cures such default within ninety (90) days after obtaining possession; provided that in the case of a default which cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced within such ninety- (90) day cure period, such Mortgagee shall have such additional time as reasonably necessary to remedy or cure such default with diligence and continuity; and provided further that (for purposes of this Section 317), such Mortgagee shall not be required to remedy or cure any non-curable default of the Developer. Any Mortgagee who forecloses on its Permitted Mortgage, or is assigned or otherwise succeeds to Developer's rights under this Agreement, shall have the right (insofar as the rights of the Agency are concerned) to undertake or continue the construction or completion of the Improvements upon execution of a written agreement with the Agency by which such Mortgagee expressly assumes the Developer's rights and obligations under this Agreement, approval of which agreement shall not be unreasonably withheld by Agency. Any such Mortgagee properly completing such improvements shall be entitled, upon written request made to the Agency, to a Certificate of Completion from the Agency.

Section 318 Failure of Mortgagee to Complete Improvements

In the case of a default under the terms of this Agreement that remains uncured following notice and opportunity to cure as provided in this Agreement, where the Permitted Mortgagee has not taken over responsibility to construct the Improvements, the Agency shall have the right prior to a foreclosure by the Mortgagee, or a transfer by deed in lieu of foreclosure, to purchase the mortgage, deed of trust or other security interest by payment to the Mortgagee of the amount of the unpaid debt, plus any accrued and unpaid interest and other charges properly payable under the mortgage, deed of trust or other security interest. If the ownership of the Property

encumbered by such Permitted Mortgage has vested in the Mortgagee, the Agency shall have the right for sixty (60) days after such vesting to acquire the Property from the Mortgagee upon payment of an amount equal to the sum of the following:

The unpaid mortgage, deed of trust or other security interest debt at the time title became vested in the Mortgagee, to which the Agency is subordinate (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);

b. All expenses with respect to foreclosure;

c. The net expense, if any (exclusive of general overhead), incurred by the Mortgagee as a direct result of the subsequent ownership or management of the Property (or portion thereof), such as insurance premiums and real estate taxes;

d. The cost of any improvements made by such Mortgagee;

e. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the Agency.

Section 319 Right of the Agency to Cure Defaults

In the event of a default or breach by the Developer of a Permitted Mortgage prior to Completion, and the Mortgagee has not commenced to complete the development, the Agency may cure the default prior to completion of any foreclosure. In such event, the Agency shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the Agency in curing the default. The Agency shall also be entitled to a lien upon the Site to the extent of such costs and disbursements. Any such lien shall be subordinate and subject to Permitted Mortgages.

Section 320 Right of the Agency to Satisfy Other Liens on the Property After Closing

Prior to Completion and after the Developer has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on its interest in the Site, the Agency shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require the Developer to pay or make provisions for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Site to forfeiture or sale. In such event, the Agency shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the Agency in satisfying any such liens or encumbrances. The Agency shall also be entitled to a lien upon the Site to the extent of such costs and expenses. Any such lien shall be subordinate and subject to Permitted Mortgages.

Section 321 Certificate of Completion

a. When the obligations of Developer under this Part 3 have been met and the Improvements have been completed in compliance with this Agreement, Developer may

request that the Agency issue a Certificate of Completion, which the Agency shall do within ten (10) days of such a request.

b. If Developer requests issuance of a Certificate of Completion but the Agency refuses, then the Agency shall provide Developer with a written explanation of its refusal within thirty (30) days of Developer's request. If and when Developer has taken the specified measures or met the specified standards, and is not otherwise in violation under this agreement, the Agency shall issue a Certificate of Completion.

c. The Certificate of Completion shall not be deemed a notice of completion under the California Civil Code, nor shall it constitute evidence of compliance with or satisfaction of any obligation of the Partnership to any holder of deed of trust securing money loaned to finance the Improvements.

PART 4 INFRASTRUCTURE REQUIREMENTS

Section 401 County/Agency Reimbursement to Developer

a. Pursuant to the Agreeement of Purchase and Sale between the County of Santa Clara and the Agency, dated June 3, 2003, specifically Section 3.2[c] therein, Agency shall pay to County and County shall make funds in the amount of Twenty Million Dollars ($20,000,000) available to reimburse Developer for or to pay for certain off-site costs and mitigation measures, as more particularly described in this Part 4 ("County's Funds"). The County's Funds shall be funded into an escrow account ("County/Agency Funds Escrow Account"). Agency shall cause the funds in the County/Agency Funds Escrow Account to be invested in an interest-bearing account with all interest accruing to County of Santa Clara.

b. County's Funds may be used for the following purposes:

(i) up to One Million Five Hundred Thousand Dollars ($1,500,000) shall be used to fund the Park Escrow for payments that may be required under the PUC Agreement for use of the Hetch Hetchy land as park land ("PUC Payments");

(ii) up to One Million Dollars ($1,000,000) may be used by the Agency to assist in the development of affordable rental housing offsite, as provided in Section 605, below ("Affordable Rental Housing Subsidy");

(iii) the balance of County's Funds, plus any savings from the foregoing categories if the entire amounts specified above are not expended, shall be available to pay the cost of the "Approved Infrastructure Work" and "Approved Mitigations" defined in Attachment No. 5 (collectively referred to as the "Approved Infrastructure and Mitigations").

c. County may disburse funds from the County/Agency Funds Escrow Account for (i) the PUC Payments , (ii) the Affordable Rental Housing Subsidy and Approved Mitigations, by giving written notice to Agency and Developer setting forth the amount to be disbursed for such purposes. If Developer seeks reimbursement for Approved Mitigations or Approved Infrastructure Work, Developer shall give written notice to County and Agency setting forth the amount to be disbursed and the specific Approved Mitigation or Approved

Infrastructure Work to be paid from such disbursement. Within three business (3) days after receipt of such notice, Agency shall approve or disapprove the disbursement request with respect to such Approved Mitigations or Approved Infrastructure Work. Agency's failure to disapprove the disbursement request within said three business day period shall be deemed Agency's approval of the disbursement request for such Approved Mitigations or Approved Infranstructure Work. Agency agrees that it will not permit any disbursement from the County/Agency Funds Escrow Account for a purpose not specified in this Part 4.

d. The parties agree that County shall be solely responsible for reimbursing Developer from County's Funds following Escrow Closing in accordance with Sections 403, 404 and 405 for the following (collectively referred to as "Developer's Reimbursable Costs"): (i) third party costs incurred by Developer in performing the Approved Infrastructure Work, and/or (ii) the costs incurred by Developer in paying and/or performing Approved Mitigations. The parties further agree that County shall be responsible for reimbursement of all Developer's Reimbursable Costs up to maximum amount of County's Funds. Upon Developer's certification that it has submitted to County all its Developer's Reimbursable Costs, but in no event later **than June 30, 2006 or a later date if said date is agreed to in writing by the County, Agency and Developer** "Agency Funds Escrow Termination Date"), Developer's right to reimbursement hereunder shall expire and, thereafter, Agency shall have no continuing obligations to reimburse Developer hereunder. After the Agency Funds Escrow Termination Date,County and Agency may terminate the Agency Funds Escrow Account and the balance shall be disbursed without any Developer consent or approval. Developer shall be solely responsible for payment of all its own costs and expenses, whether incurred before, or after, Escrow Closing, except for Developer's Reimbursable Costs.

Section 402 Approval of Plans and Budget for Approved Infrastructure and Mitigations

a. Preliminary Plans. Within sixty (60) days from the Effective Date, Developer shall prepare and submit to Agency, for Agency's review and approval, which approval shall not be unreasonably withheld, preliminary plans for the Approved Infrastructure and Mitigations ("Preliminary Plans"). Agency shall review the Preliminary Plans and shall deliver to Developer its written approval or disapproval within fifteen (15) days from receipt. If Agency disapproves, it shall describe with specificity its reasons for disapproval. If Agency fails to deliver to Developer Agency's written response within said fifteen (15) day period, Agency shall be deemed to have approved the Preliminary Plans. If Agency disapproves the Preliminary Plans, the parties shall cooperate to resolve their differences and develop Preliminary Plans that are acceptable to both parties.

b. Budget. Following preparation of the Preliminary Plans, and at such time as Developer is able to obtain cost estimates for the Approved Infrastructure and Mitigations, including sums expanded directly by the County, Developer shall develop a preliminary budget for the Approved Infrastructure and Mitigations ("Preliminary Budget") and shall submit the same to Agency. The parties agree that the Preliminary Budget will be a further iteration of the proposed budget included as Part of Attachment 5. Agency shall approve or disapprove the Preliminary Budget in writing within fifteen (15) days from receipt thereof. If Agency disapproves of the Preliminary Budget, Agency shall describe with specificity the reasons for

disapproval. Promptly after such disapproval, the parties shall cooperate to resolve their differences and develop a Preliminary Budget that is acceptable to both parties. Notwithstanding for foregoing, if the sum of the Preliminary Budget, PUC Payments and Affordable Rental Housing Subsidy exceeds Twenty Million Dollars ($20,000,000), then Developer shall notify Agency in writing of the amount of the excess. Agency agrees to fund up to an additional Six Million Dollars ($6,000,000) into a Second Agency Funds Escrow Account (Second Escrow Account), to the extent such excess is necessary for carrying out the conditions of approval of the Entitlements. The parties agree that the June 30, 2006 dedline set forth in Section 401(d) does not apply to reimbursement requests from the Second Escrow Account. If the sum of the Preliminary Budget, PUC Payments and Affordable Rental Housing Subsidy exceeds Twenty-Six Million Dollars ($26,000,000), then Agency shall consider in good faith Developer's request for County Funds in excess of $26,000,000 or a change in scope of the projects included in the Preliminary Budget, which Agency shall approve or disapprove in its sole discretion.

c. Final Plans. Once the Preliminary Plans and the Preliminary Budget have been prepared, Developer shall cause final plans and drawings to be prepared for submission to the City. Before the final plans for the Approved Infrastructure and Mitigations are submitted to Agency and/or the City, Developer and Agency shall meet with the City Engineer to identify all City requirements for the Approved Infrastructure and Mitigations. In addition, Developer shall deliver the final plans to Agency for Agency's review prior to submission thereof to the City. Agency shall review the final plans for conformity to the approved Preliminary Plans and may disapprove the final plans only if they contain material deviations from the approved Preliminary Plans. The final plans for the Approved Infrastructure and Mitigations, when approved by the parties, shall be designated the "Approved Final Infrastructure and Mitigation Plans." Developer shall make material changes to the Approved Final Infrastructure and Mitigation Plans only with the prior written consent of Agency.

d. Final Infrastructure and Mitigation Budget. At such time as the Approved Final Infrastructure and Mitigation Plans have been approved by the City, Developer shall consult with Agency and/or the City to obtain the most current estimates of the costs of the Approved Mitigations. Promptly thereafter, Developer shall prepare and submit to Agency, for review and approval, which approval shall not be unreasonably withheld, a final budget for the Approved Infrastructure and Mitigations ("Final Budget"). The Final Budget shall be based on the Preliminary Budget revised to address any additional costs raised by the City approval of the Approved Final Infrastructure Plans and the bids received by Developer therefore and the most recent estimates of the cost of the Approved Mitigations. Agency shall approve or disapprove the Final Budget within fifteen (15) days from receipt thereof. If Agency disapproves, Agency shall describe with specificity the reasons for its disapproval. Agency may only disapprove the Final Budget if it contains material cost increases from the Preliminary Budget. If Agency disapproves the Final Budget, the parties shall cooperate to resolve their differences and develop a Final Budget that is acceptable to both parties. The parties agree that Project site conditions that could not have reasonably determined through reasonable diligence by the Developer may, upon discovery, necessitate further amendment to the Final Budget. The parties further agree that should such site conditions arise the parties will negotiate in good faith a revision to the Final Budget.

e. Construction Schedule. As soon as reasonably possible following the Effective Date and from time to time thereafter upon request from Agency, Developer shall deliver to Agency the then current construction schedules for the Entitlements, permits, Infrastructure work and construction of housing on the Site. Developer shall deliver to Agency (whether or not Agency has so requested) copies of updates or amendments to the schedules that contain material changes from the prior schedules.

Section 403 Developer Submission of Request for Payment of Developer's Reimbursement Costs From Second Escrow Account

From time to time following Escrow Closing, but not more often than once every month, Developer may submit to Agency separate written Requests for Reimbursement of Developer's Reimbursable Costs from the Second Escrow Account. Each Request for Reimbursement shall (i) itemize the amounts for which reimbursement is requested by category, (ii) contain a copy of the invoice or bill for which Developer seeks reimbursement, (iii) contain Developer's certification that all work for which reimbursement is being requested has been completed, (iv) contain from each party providing labor or materials for work for which Developer is entitled to reimbursement hereunder (a) unconditional lien releases for work for which Agency has made any previous reimbursement to Developer, and (b) conditional lien releases for work for which Developer is requesting release pursuant to the then current Request for Reimbursement. (v) contain Developer's certification (a) that said costs are not subject to reimbursement from County Funds or that said costs are subject to reimbursement as Approved Mitigation or Approved Infrastructure Work but that all County Funds have been expended on Approved Mitigation or Approved Infrastructure Work and (vi) as a condition to the final disbursement, evidence that the City has accepted the applicable work. Agency shall have no obligation to make any disbursement with regard to any work if any stop notice or mechanics lien has been delivered or recorded with regard thereto.

Section 404 Conditions to Disbursement of Reimbursement

Agency's obligations to reimburse any amounts from the Second Escrow Account under this Part 4 shall be conditioned upon Developer's delivery of the following with each Request for Reimbursement and/or satisfactory of the following conditions:

a. Completion of Work. Delivery to Agency of reasonable evidence that all work and/or materials or services for which reimbursement is being requested has been performed; provided with regard to work for which such determination cannot be made until the work is completed, Developer shall deliver reasonable information regarding the progress of work not then completed;

b. Statement of Remaining Reimbursement Obligation. Developer shall include with each Request for Reimbursement its calculation of the amounts that previously have been disbursed to it under this Part 4, the unpaid reimbursement amounts that Developer estimates it will request in the future for Developer's Reimbursement Costs and the estimated date Developer anticipates completion of the work that qualifies for reimbursement as Developer's Reimbursable Costs ("Developer's Status Report"). The parties acknowledge that Developer's Status Reports, except as to work for which Developer has been paid, will be an

estimate furnished to Agency to assist Agency in ascertaining the status of work subject to reimbursement from Agency's Funds and the amount of the unpaid balance of Developer's Reimbursable Costs.

c. Inspections. Any work that has been inspected since the last disbursement shall have passed such inspection.

d. Documentation. Developer having delivered to Agency all documents required pursuant to Section 403.

Section 405 Escrow Disbursement From Second Escrow Account

Within thirty (30) days following receipt of a Request for Reimbursement and satisfaction of the conditions described in Section 404, Agency shall pay to Developer an amount equal to ninety percent (90%) all amounts described in the Developer's Request for Reimbursement, or one hundred percent (100%) of that amount if Developer has requested only ninety percent (90%) of the value of the work completed. If Agency disputes that Developer is entitled to disbursement of any amount described in a Request for Reimbursement, Agency shall pay ninety percent (90%) of all undisputed amounts and shall notify Developer in writing of the disputed amounts. If the parties are unable to resolve the dispute within thirty (30) days after Developer has submitted the Request for Reimbursement, then the Engineer of Record shall determine whether the amount in dispute by Agency is properly included within the Request for Reimbursement. The final disbursement, including the ten percent (10%) retention previously withheld from any prior disbursement, shall be delivered thirty five (35) days after Developer has properly and timely recorded a notice of completion for the work and has delivered to Agency unconditional lien releases from the general contractor (if any) and from all subcontractors who have sent preliminary lien notices to Agency or Developer with regard to the work.

Section 406 Prevailing Wage

For purposes of this Section 406, the term "Project" means all works of improvement for which Developer is reimbursed from County or Agency's Funds. Developer shall pay prevailing wage (as defined in California Labor Code Section 1771) for any work or improvement hereunder only for the Project.

Section 407 Time Table for Installation of Infrastructure

Subject to receipt of all City approvals and all necessary permits, Developer shall commence the Approved Infrastructure Work within thirty (30) days following Parcel "D" Escrow Closing and shall diligently pursue construction to completion in compliance with the Schedule of Performance set forth in Attachment No. 3.

Section 408 Completion of Infrastructure

At such time as Developer causes the completion of the Approved Infrastructure Work, Developer shall cause a notice of completion to be recorded and shall take such other steps with regard to the infrastructure as is required to satisfy all City requirements with regard thereto.

PART 5 CONDITION OF SITE

Section 501 Developer Review; As/Is

Developer represents and warrants that Developer has reviewed the Site and other matters of concern to Developer and that Developer has satisfied itself as to the physical, environmental, legal and economic condition and all other aspects of the Site and their suitability for the purposes intended by Developer. Developer acknowledges and agrees that Developer is acquiring the Site subject to all existing laws, ordinances, rules and regulations, and that, except as expressly set forth in this Agreement, neither Agency nor any of the Agency's employees, agents, representatives, or attorneys (collectively "Agency's Agents") have made any warranties, representations or statements regarding the availability of any approvals, or the laws, ordinances, rules or regulations of any governmental or quasi-governmental body, entity, district or agency having authority with respect to the development, occupancy, conditions and/or use of the Site. Except for Agency's representations and warranties expressly set forth in this Agreement, Agency disclaims the making of any representations or warranties, express or implied, regarding the Site or matters affecting the Site, including the physical condition of the Site, title to or boundaries of the Site, soil condition, the presence of Hazardous Materials or other environmental matters, compliance with building, health, safety, land use and zoning laws, regulations and orders, and traffic patterns. Developer further acknowledges that except as may be expressly set out in this Agreement, Agency has made no representation or warranty regarding the accuracy or completeness of any reports or studies relating to the Site that have been delivered to or made available to Developer other than that the same are true and correct copies of the reports and studies available to Agency. Developer moreover acknowledges that (i) Developer is a sophisticated real estate developer, knowledgeable and experienced in the financial and business risks attendant upon acquiring real property for development and capable of evaluating the merits and risks of entering into this Agreement and purchasing the Site, (ii) that Developer has entered into this Agreement in reliance on its own (or its experts') investigation of the physical, environmental, economic and legal condition of the Site and (iii) that except for Agency's representations and warranties expressly set out in this Agreement, Developer is not relying on any representations and warranties made by Agency or Agency's Agents concerning the Site. Subject to Agency's express obligations and representations and warranties set forth in this Agreement, Developer shall purchase the property in its "As Is" condition at Escrow Closing assuming the risk that adverse physical, environmental, economic or legal conditions may not have been revealed by its investigations. Agency shall have no liability for any subsequently discovered defects, whether latent or patent, except as expressly provided in this Agreement for Approved Mitigations. Developer further acknowledges that Agency shall not be obligated to demolish, repair or improve any improvements on the Site.

Section 502 Approved Mitigation Work

Developer shall perform any work required by the Approved Mitigations. Until improvements are substantially completed on any portion of the Site, if Developer discovers any items that are identified in Section B.1, B.2 and B.3 of Attachment 5 ("Attachment 5B Matters"), and any governmental agency having jurisdiction over such Attachment 5B Matter ("Mitigation Regulatory Agency") requires remedial action with regard to such Attachment 5B Matter, Developer shall, as an accommodation to Agency, promptly take action to develop a work plan

acceptable to the Mitigation Regulatory Agency and to implement remedial action in accordance with the approved work plan, subject to reimbursement of Approved Mitigation Costs by County from County Funds in accordance with this Section 401. By undertaking the development of a work plan to implement remedial action for such Attachment 5B Matter, Developer shall not be deemed to have become a potentially responsible party or assumed any liability to County or Agency or the Mitigation Regulatory Agency for the remediation of such Attachment 5B Matter. At such time as Developer discovers the existence of any Attachment 5B Matter of any nature whatsoever on the Site, Developer promptly shall notify County and Agency in writing and the parties shall follow the procedures set out below.

a. Notice to Agency. Developer shall promptly notify County and Agency in writing within five (5) days from Developer's discovery of any Attachment 5B Matter on the Site.

b. Mitigation Regulatory Agency Notification. Except in the case of an emergency or if immediate notice to such Mitigation Regulatory Agency is required by law, Developer will notify County and Agency before contacting any Mitigation Regulatory Agency regarding any Attachment 5B Matter, to provide County and Agency an opportunity to review and analyze the situation. Developer shall act as lead party in discussions and negotiations with Mitigation Regulatory Agencies.

c. Mitigation Work Plan. Except for the remediation of burrowing owls or other endangered species which shall be the obligation of County pursuant to the County Purchase and Sale Agreement, if a Regulatory Agency requires remedial action with respect to the Attachment 5B Matter, Developer shall employ such consultants as shall be reasonably necessary to prepare a work plan for such remediation and seek approval of such plan from the Mitigation Regulatory Agency. Developer shall first submit to County and Agency for their approval, which AGENCY APPROVAL shall not be unreasonably withheld or delayed, any remediation plan prior to submittal of such plan to the Mitigation Regulatory Agency. Agency shall approve or disapprove in writing any such remediation plan within five (5) days after receipt thereof. If Agency disapproves of the remediation plan, Agency shall describe with specificity the reasons for its disapproval. If Agency disapproves the remediation plan, the parties shall cooperate to resolve their differences and shall develop a remediation plan that is acceptable to Developer prior to submission thereof to the Mitigation Regulatory Agency. Once, the remediation plan is submitted to the Mitigation Regulatory Agency for approval, Developer shall keep Agency and County reasonably informed regarding discussions with the Mitigation Regulatory Agency and shall cause Developer's consultants to provide to Agency and County (contemporaneously with delivery to Developer and without prior consultation with Developer) copies of all reports and information generated by the consultant. At the request of Agency, its consultant, agent or employee may be present at all times that Developer or its consultants or engineers are on the Site to observe any remediation work. The costs incurred by Developer in preparing and revising the remediation plan, as well as the costs incurred in obtaining Mitigation Regulatory Agency approval of such plans shall be Attachment 5B Mitigation Costs and reimbursed by County to Developer as Developer's Reimbursable Costs in accordance with Section 401.

d. Approved Work Plan. At such time as the Mitigation Regulatory Agency approves the remediation plan, Developer shall obtain bids from qualified consultants, engineers or contractors to perform the work required by the remediation plan. Developer shall inform County and Agency of the amounts of the bids for County and Agency's review and County and Developer shall discuss the bids. Developer shall engage the consultant, engineer or other contractor(s) whose bid was selected by Developer to perform the work required by the approved remediation plan. All costs of work required by the approved remediation plan or any other work required by a Mitigation Regulatory Agency with respect to the Attachment 5B Matter shall be Attachment 5B Mitigation Costs and reimbursed to Developer as part of Developer's Reimbursable Costs in accordance with Section 401.

e. Extension of Close of Escrow. Notwithstanding anything contained in this Agreement, Developer may extend the Closing Date if the City declines to issue permits or approvals for the Site because an Approved Mitigation required as a condition to the issuance of such permits or approvals has not been paid or performed or if any Attachment 5B Matter is discovered on the Site, and Developer would be prevented or delayed in the development of housing units on the Site due to the existence of such Attachment 5B Matter. In such event, the Escrow Closing shall be extended until the date that is ten (10) days after the Approved Mitigation has been paid or performed or the remediation plan approved by the Mitigation Regulatory Agency for the remediation of the Attachment 5B Matter has been implemented and the Mitigation Regulatory Agency has accepted such work as complete, but not later than the originally scheduled Closing Date seth forth in the County Purchase and Sale Agreement.

PART 6 USE OF THE SITE

Section 601 Uses

The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Site or any part thereof, that the Developer, its successors and assignees shall devote the Site to the residential uses specified in the Redevelopment Plan, the Agreement Affecting Real Property, this Agreement and the Grant Deed for the Site.

Section 602 Maintenance of the Site

After the Close of Escrow, Developer, its successors and assigns, shall maintain the Site as provided in the Grant Deed.

Section 603 Obligation to Refrain from Discrimination

The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Site or any part thereof, there shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site.

Section 604 Form of Nondiscrimination and Nonsegregation Clauses

The Developer shall refrain from restricting the rental, sale or lease of the property on the basis of the race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry of any person. All deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

a. In deeds: "The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

b. In leases: "The lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the leasing, subleasing, renting, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall lessee itself, or any person claiming under or through it, establish or permit such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the land herein leased."

c. In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land."

Section 605 Affordable Housing Obligations

a. Agency's Affordable Housing Purpose. Agency has entered into this Agreement to facilitate the development of affordable housing and to increase the supply of affordable housing in Santa Clara County. In keeping with this goal, Developer has agreed, subject to the terms and conditions set forth in this Section 605, to contribute funds towards affordable rental housing to be developed off-site and to make available up to one hundred ten (110) of the aggregate number of housing units that are developed on the Site to be sold at a sales price that results in Affordable Housing Cost to Moderate Income purchasers, including 85 units in Parcel "C" and 25 units in Parcel "D", all as described in this Section 605 below. The parties

agree that if the City approves a development that contains less than five hundred seventy three (573) total market rate units, the obligation to provide affordable market rate units as described hereinbelow will be reduced on a pro-rata basis for each category of market rate and affordable on-site housing units. For example if the total number of market rate condominium units on Parcel C is reduced by six percent from 230 to 216 units, the number of affordable units on Parcel C will be reduced to 80 units.

b. Off-Site Affordable Rental Housing.

(1) Not later than six months after the fifth (5th) anniversary of the close of escrow for Agency's or Developer's acquisition of the Site, or any portion thereof, whichever is earlier (the "Main Street Completion Date"), Agency shall cause to be constructed a 98-unit rental housing development (the "Main Street Project"), to be occupied by and rented at Affordable Rents exclusively to Low Income and Very Low Income seniors. The City shall provide for the land for the Main Street Project at a cost that is sufficiently low to permit the construction of the Main Street Project to be financed by traditional affordable housing sources and so that the rents on not less than 57 of the units shall be Affordable Rent for Very Low Income seniors and the rents on the balance of the units shall be Affordable for Low Income seniors, with the exception of one unit to be made available to a resident manager.

(2) The affordability of the units in the Main Street Project shall be assured by the recordation of rent and income restrictions, which shall remain in effect for not less than 55 years.

(3) Developer shall make a contribution to the Agency's Low and Moderate Income Housing Fund, in the amount of $5,000,000 (the "Contribution"), to be used for the development of the Main Street Project, or to reimburse Agency for funds advanced by Agency for the development of the Main Street Project. Developer shall disburse the Contribution as follows:

(A) Developer shall disburse the sum of Seven Hundred Fifty Thousand ($750,000) upon issuance of the first building permit for the Project within Parcel "C" (excepting permits issued for models and sales offices);

(B) Developer shall disburse the sum of Four Hundred Twenty-Five Thousand ($425,000) upon the close of escrow for each unit within Parcel "C" that results in an increment of ten percent (10%) of the total units within Parcel "C" being sold. For example, if there are 100 units within Parcel "C", a payment of $425,000 will be required upon the close of escrow of the 10th, 20th, 30th, 40th 50th, 60th, 70th, 80th, 90th and 100th unit within Parcel "C".

(4) A portion of the County's Funds deposited in the County/Agency Escrow Funds Account equal to One Million Dollars ($1,000,000) shall be contributed to the Main Street Project. If the Main Street Project is not completed by the Main Street Completion Date, the Agency shall have the right to use the $1,000,000 for any Low Income or Very Low Income affordable housing project in the City of Milpitas for two years following the Main Street Completion Date. To the extent the Agency fails to spend or contractually commit any

portion of the One Million Dollars ($1,000,000) within two (2) years after the Main Street Completion Date, the Agency shall disburse these funds to the County.

c. Parcel "C" Affordable For-Sale Housing Use

(1) Subject to Developer's acquisition of Parcel "C", Developer shall make available for sale exclusively to Moderate Income purchasers (defined below), eighty-five (85) of the units constructed in Parcel "C" (the "Parcel "C" Affordable Units"). The maximum sales price for each Parcel "C" Affordable Unit shall be determined in accordance with the "Affordable Housing Sales Price Calculation Example" attached to this Agreement as Attachment No. 9 (which shall be re-calculated by the Agency annually), with the assumption that there will be 1.5 occupants per bedroom with no less than one more occupant than bedroom count (i.e., 2 persons for a one-bedroom unit) and with the understanding that the interest rate for purposes of determining the amount of a mortgage to support a promissory note for the purchase of a Parcel "C" Affordable Unit (and establishing the maximum sales prices in Attachment No. 9), shall be the interest rate in effect at the time the Agency recalculates Attachment No. 9 on an annual basis). The Agency shall use the average 30 year fixed rate mortgage defined by Freddie Mac as published in Freddie Mac's weekly primary mortgage market survey as the interest rate. The "Minimum Sales Prices" for the Parcel "C" Affordable Units shall be the lesser of (i) the price at which similarly sized market rate units within the Site are sold, or (ii) the following sales prices:

One-bedroom Units:	$290,000
Two-bedroom Units:	$330,000
Three-bedroom Units:	$370,000
Four-bedroom Units:	$400,000

In the event that the market prices (which shall be determined with reference to the price at which similarly sized market-rate units within the Site are sold) of a Parcel "C" Affordable Unit is less than the Minimum Sales Price, the Agency shall have no obligation to increase the amount of the silent second mortgage loan as otherwise required by paragraph (7) below.

(2) For purposes of this Agreement, the term "Moderate Income" means a household income that does not exceed 120% of the Santa Clara County median income, as determined, updated and published annually by the California Department of Housing and Community Development, adjusted for household size appropriate for the unit, as defined in California Health and Safety Code Section 50093.

(3) Agency shall provide assistance to Developer to qualify purchasers for the purchase of the Parcel "C" Affordable Units. Certification and recertification of household size and income shall be administered by either the Agency or the Housing Authority of the County of Santa Clara, or another entity designated by the Agency.

(4) Developer shall use its best efforts to market the Parcel "C" Affordable Units to the same extent and in the manner as those being developed on the Site that are not designated as affordable units.

(5) Participant shall submit to the Agency a Disbursement Plan that indicates the location of the Parcel "C" Affordable Units. The Disbursement Plan shall be subject to the approval of the Agency Executive Director or designee, which approval shall not be unreasonably withheld, conditioned or delayed. However, the Parcel "C" Affordable Units shall be distributed throughout the development as conceptually shown on the Preliminary Distribution Plan attached to this Agreement as Attachment No. 11.

(6) The conveyance of each Parcel "C" Affordable Unit shall be subject to a Resale Restriction and Option to Purchase Agreement ("Resale Agreement") substantially in the form attached to this Agreement as Attachment No. 10, with such modifications thereto as may be agreed upon by the Agency and Developer, which shall ensure that the income and sales price restrictions applicable to each Parcel "C" Affordable Unit remain in effect for at least 45 years. The Resale Agreement shall be recorded against each Parcel "C" Affordable Unit sold by Developer to a Moderate Income purchaser upon the initial close of escrow for the sale of such Parcel "C" Affordable Unit. Following recordation of the Resale Agreement as required hereunder, the Agency shall have the right to enforce the Resale Agreement and, upon default under any of the terms of the Resale Agreement, the Agency may exercise any and all of its rights and remedies.

(7) In order to assure that the Housing Costs payable by the Moderate Income purchasers of the Parcel "C" Affordable Units are "Affordable Housing Costs", as defined in California Health and Safety Code Section 50052.5, the Agency shall provide a silent second mortgage loan (the "Parcel "C" Agency Loan") to each initial Moderate Income purchaser of a Parcel "C" Affordable Unit, in the amount of $50,000 per Parcel "C" Affordable Unit (for a maximum total of $4,250,000 for all 85 Parcel "C" Affordable Units). The silent second mortgages will be effected at the time of the initial sale of each Parcel "C" Affordable Unit and the sum of $50,000 shall be delivered to escrow by the Agency on behalf of the homebuyer as a portion of the purchase price for such Parcel "C" Affordable Unit. The Agency's silent second mortgage shall be evidenced by a promissory note and secured by a subordinate deed of trust (the "Loan Documents") in the forms attached to this Agreement as Attachment No. 12 and Attachment No.13, respectively. The subordinate deed of trust shall be recorded concurrently with the grant deed for the respective Parcel "C" Affordable Unit. Notwithstanding the foregoing, in the event that Developer is unable to entice a qualified buyer to purchase any particular Parcel "C" Affordable Unit at a sales price that is equal to or more than the Minimum Sales Prices, Agency and Developer shall equally increase the amount of the Agency-approved silent second mortgages by an amount necessary to entice a qualified buyer to purchase the unit, sharing the increased cost 50/50. Developer may choose to contribute its 50% share by reducing the sales price of the unit by an amount equal to the Agency's silent second mortgage loan increase.

d. Affordable Housing on Parcel "D"

(1) Developer shall make twenty-five (25) of the housing units constructed on Parcel "D" available to Moderate Income households (the "Parcel "D" Affordable Units") as specified in deed restrictions or other enforceable covenants running with the land (each of which shall constitute an "Affordable Parcel "D" Unit"); ten (10) of these units shall be detached units, and the remainder may be either detached or townhome units, at the Developer's

option. Notwithstanding the preceding sentence, Developer shall have no obligation to sell the Parcel "D" Affordable Units to Moderate Income households at prices that are less than the price for identically sized market-rate units on Parcel "D". Developer shall cooperate with the Agency in ensuring that appropriate deed restrictions or other enforceable covenants running with the land are recorded that ensure the twenty-five (25) units remain affordable upon resale by the initial buyer.

(2) Developer shall submit to Agency a Disbursement Plan that indicates the location of the Parcel "D" Affordable Homes within the development. The Disbursement Plan is subject to the approval of the Executive Director of the Agency, or his or her designee, which approval shall not be unreasonably withheld, conditioned or delayed. However, the Parties agree that the Affordable Homes will be distributed throughout the development as conceptually shown on the Preliminary Distribution Plan attached to this Agreement as Attachment No. 11.

(3) Agency shall provide purchasers of the Parcel "D" Affordable Units with direct subsidies, silent-second mortgages, or both, necessary to make the units affordable to Moderate Income households. If Agency elects to provide silent second mortgages, the silent-second mortgages will be effected at the time of the sale of each Parcel "D" Affordable Unit and monies shall be delivered to escrow by the Agency on behalf of the homebuyer for the benefit of the Owner as a portion of the purchase price for each Parcel "D" Affordable Unit. The Agency's silent-second mortgage shall be secured by a Promissory Note and a Subordinate Deed of Trust ("Loan Documents") in the form attached hereto as Attachment No. 12 and Attachment No. 13, respectively. The Deed of Trust shall be recorded concurrently with the grant deed for the Parcel "D" Affordable Unit. Similarly, if Agency provides direct subsidies to the purchasers of the Parcel "D" Affordable Units, Agency shall deliver such monies into escrow on behalf of the homebuyer as a portion of the purchase price for each Parcel "D" Affordable Unit. As a condition of receipt of such subsides, the purchaser of the Parcel "D" Affordable Unit shall execute a Resale Restriction and Option to Purchase Agreement ("Resale Agreement") substantially in the form set forth in Attachment No. 10 with such modifications thereto as may be agreed between Agency and Developer. The Resale Agreement may be enforced by the Agency.

e. Agreement Containing Covenants

To assure that affordable units will be developed and maintained as provided in this Section 605, at Parcel "C" Closing and the Parcel "D" Closing, Developer and Agency will record an Agreement Affecting Real Property substantially in the form attached to this Agreement as Attachment No. 7 (the "Regulatory Agreement"). The Regulatory Agreement will restrict sales and resales by the successive owners of each Affordable Unit to a sales price that is "Affordable" to Moderate Income purchasers (by, among other provisions, restricting the sales price for which the owner of a For Sale Affordable Unit may sell the unit to an "Affordable" price, as described in the Regulatory Agreement). The Regulatory Agreement shall contain such rights to purchase and other mechanisms as Agency shall determine are necessary to insure that the For-Sale Affordable Units all remain affordable. Provided Developer is not in default of its obligations under this Section 605, Agency shall execute and record such instruments as may be necessary to release the lien of the Regulatory Agreement from the units constructed in Parcels C

and D that are not required to be made available to Moderate Income purchasers in accordance with this Agreement.

Section 606 Effect and Duration of Covenants

The covenants established in this Agreement shall, without regard to technical classification and designation, be binding on the Developer and any successor in interest to the Site or any part thereof for the benefit and in favor of the Agency, its successors and assigns, and the City. Such covenants as are to survive the Completion shall be contained in the Grant Deed and the Regulatory Agreement and shall remain in effect for the period specified therein.

PART 7 DEFAULTS, REMEDIES AND TERMINATION

Section 701 Defaults - General

a. Subject to the extensions of time set forth in Section 802, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The party who fails or delays must immediately commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence.

b. The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

c. If a monetary event of default occurs, prior to exercising any remedies hereunder, the injured party shall give the party in default written notice of such default. The party in default shall have a period of seven (7) calendar days after such notice is received or deemed received within which to cure the default prior to exercise of remedies by the injured party.

d. If a non-monetary event of default occurs, prior to exercising any remedies hereunder, the injured party shall give the party in default notice of such default. If the default is reasonably capable of being cured within thirty (30) calendar days after such notice is received or deemed received, the party in default shall have such period to effect a cure prior to exercise of remedies by the injured party. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and the party in default (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, then the party in default shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by the injured party. In no event shall the injured party be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default.

e. Any notice of default that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice of default that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice of default that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

Section 702 Institution of Legal Actions

Subject to Section 706, in addition to any other rights or remedies (and except as otherwise provided in this Agreement), either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Santa Clara, State of California, in any other appropriate court of that county, or in the United States District Court for the Southern District of California.

Section 703 Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

Section 704 Acceptance of Service of Process

a. In the event that any legal action is commenced by the Developer against the Agency, service of process on the Agency shall be made by personal service upon the Executive Director or Chairman of the Agency, or in such other manner as may be provided by law.

b. In the event that any legal action is commenced by the Agency against the Developer, service of process on the Developer shall be made by personal service upon the Developer (or upon a general partner or officer of the Developer) and shall be valid whether made within or without the State of California, or in such manner as may be provided by law.

Section 705 Rights and Remedies Are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

Section 706 Reserved

Section 707 Agency's Default

In the event that the Close of Escrow does not occur due to a default under this Agreement by Agency, (a) this Agreement shall not be terminated automatically, but only upon

delivery to Escrow Holder and Agency of written notice of termination from Developer, in which event (i) Agency shall pay all unreimbursed Developer's Reimbursable Costs payable from the Second Escrow Account, (ii) Escrow Holder shall automatically return to Developer any other sums deposited by Developer with Escrow Holder, and (iii) Developer shall be entitled to recover whatever other damages it has sustained on account of Agency's default hereunder, which damages shall not exceed One Million Five Hundred Thousand Dollars ($1,500,000), or (b) Developer shall be entitled to keep this Agreement in effect and pursue any and all other remedies available to it against Agency including the specific performance of this Agreement, and Developer may record a notice of pendency of action against the Site.

Section 708 Developer's Documents

If for any reason except Agency's default, Developer fails to close escrow with regard to either or both of the Parcels constituting the Site, then upon Developer's receipt of the Deposit and any other funds Developer is entitled to receive from Agency as a result of such termination, Developer shall deliver to Agency, at no cost to Agency, within ten (10) days after Agency's written request, all of Developer's environmental reports and studies, soils and geologic reports, utility constraints, hydrology studies, inspection or due diligence reports and topographic maps, if any, prepared by Developer with respect to the Site ("Developer's Work Product"). Agency acknowledges that Developer's Work Product will not include any economic proformas or financial projections, marketing plans or other proprietary material generated by or on behalf of Developer, except for architectural plans as provided below.

a. Assignment. If Developer fails to close escrow for any reason except Agency's default, then upon Developer's receipt of the Deposit and any other funds Developer is entitled to receive from Agency as a result of such termination, without the need for any additional documentation less reasonably requested by Agency and reasonably approved by Agency, Developer shall grant to Agency, the limited right and license to use all architectural plans, working drawings, designs and renderings of housing units ("Units") and other improvements proposed to be constructed by Developer or Developer's assignee (if such assignee will use Developer's Architectural Plans) on the Site ("Architectural Plans") exclusively for the purposes of constructing and marketing the Units to be built and sold by Agency or Agency's assignee on the Site. Such Architectural Plans are delivered by Developer without warranty, express or implied (except that Developer warrants that it has paid for the same in full), and in their "AS IS" condition. Agency acknowledges and agrees that: (1) Agency shall only be entitled to use such Architectural Plans in building Units on the Property and at no other location; (2) the Architectural Plans may not be sold or otherwise transferred or assigned, except to a purchaser of the Site, but only after such purchaser signs a written agreement acknowledging and agreeing to the terms and conditions of the license and provides Developer with an indemnity and release substantially similar to the applicable provisions set forth in paragraph b. of this Section 711 below; (3) the names KB HOME South Bay Inc., KB HOME or any variation thereof shall not be used or referenced in connection with the construction or marketing of any Units built upon the Architectural Plans; (4) the Architectural Plans were in the process of being prepared for Developer's purposes, the details and specifications of such plans have not been completed any may not meet industry standards, and prior to its use of the Architectural Plans, Agency shall have its own architects and structural engineers certify that the Architectural Plans are free from errors, omissions or other defects and shall make such revisions

to the Architectural Plans to enable Agency's architect and structural engineer to make such certification; and (5) neither Agency nor its successors and assigns shall be entitled to enforce against Developer or any other third parties any rights, claims (including copyright infringement claims) or demands relating to or in any way connected with state or federal copyright protection of the Architectural Plans, all such copyrights and protections being fully retained by Developer, K B HOME South Bay Inc., and K B HOME, as their interests may appear.

b. Indemnity and Release. Agency shall indemnify, defend and hold Developer, K B HOME, and their directors, officers, employees, agents, assignees, shareholders, affiliates and representatives (collectively "Indemnitees") harmless from any loss, damage, injury or claim or any kind or character to any person or property arising from, caused by or relating to Agency's use of the Architectural Plans, including without limitation, any claims relating to errors or omissions or construction defects. The foregoing indemnity shall include reasonable attorney's fees and costs of court. Agency hereby releases Developer and the Indemnitees from and waives on its behalf, and on behalf of its successors and assigns, all claims, demands and causes of action against Developer and the Indemnitess for any loss, liability, damage, cost, expense, injury or claim including attorney's fees and costs of court relating to Agency's use of the Architectural Plans as described in the preceding sentence (collectively, "Losses"). The foregoing release and waiver and the indemnity and obligation to defend and hold harmless (1) shall apply to any claim or action brought by a private party or by a Governmental Authority, or any law, statute, ordinance or regulation now or hereinafter in effect, (2) shall apply with respect at all Losses before or after the conveyance of all Units on the Site; and (3) shall apply to Losses incurred by Developer or any Indemnitee or their property as well as by Agency or any third parties and their property. With respect to design, construction methods, materials, locations and other matters for which Developer has given or will give its approval, recommendation or other direction, the foregoing release and waiver and the indemnity and obligation to defend and hold harmless shall apply irrespective of Developer's approval, recommendation or other direction. Agency acknowledges that it has been advised by its legal counsel and is familiar with the provisions of California Civil Section 1542, which provides as follows:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

Agency hereby expressly waives any right it may have under Civil Code Section 1542 as well as under any other statute or common legal principle of similar effect.

PART 8 GENERAL PROVISIONS

Section 801 Notices

Formal notices, demands and communications between Agency and Developer shall be deemed sufficiently given if dispatched by first class mail, registered or certified mail, postage prepaid, return receipt requested, or by electronic facsimile transmission followed by delivery of

a "hard" copy, or by personal delivery (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), to the addresses of Agency and Developer as set forth in Sections 105 and 106 hereof. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail. Any notice that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

Section 802 Force Majeure

a. Performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, acts of terrorism, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, material or tools, delays of any contractor, sub-contractor or supplier, acts of the other party, acts or failure to act of the City of Milpitas or any other public or governmental agency or entity (except that acts or failure to act of Agency shall not excuse performance of Agency), or any causes beyond the control or without the fault of the party claiming an extension of time to perform.

b. An extension of time for any such cause (a "Force Majeure Delay") shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the party claiming such delay and interference delivers to the other party written notice describing the event, its cause, when and how such party obtained knowledge, the date and the event commenced, and the estimated delay resulting therefrom. Any party claiming a Force Majeure Delay shall deliver such written notice within thirty (30) days after it obtains actual knowledge of the event. Times of performance under this Agreement may also be extended in writing by the Agency and the Developer.

Section 803 Conflict of Interest

a. No member, official, or employee of Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested.

b. Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, except as provided in the County Purchase and Sale Agreement.

c. Developer, on behalf of itself and its successors and assigns, covenants and agrees to not market or sell any of the Affordable Homes to be constructed on the Site in accordance with this Agreement to any City or Agency employee or official, or any employee of or person having a financial interest in Developer or any Developer's Parties.

Section 804 Nonliability of Agency Officials and Employees

No member, official, agent, legal counsel or employee of Agency shall be personally liable to Developer, or any successor in interest in the event of any default or breach by Agency or for any amount which may become due to Developer or successor or on any obligation under the terms of this Agreement.

Section 805 Inspection of Books and Records

Prior to Completion, the Agency shall have the right at all reasonable times to inspect the books and records of the Developer pertaining to the Site as pertinent to the purposes of this Agreement. The Developer shall also have the right at all reasonable times to inspect the books and records of the Agency pertaining to the Site as pertinent to the purposes of this Agreement.

Section 806 Approvals

a. Except as otherwise expressly provided in this Agreement, approvals required of Agency or Developer in this Agreement, including the attachments hereto, shall not be unreasonably withheld or delayed. All approvals shall be in writing. Failure by either party to approve a matter within the time provided for approval of the matter shall not be deemed a disapproval, and failure by either party to disapprove a matter within the time provided for approval of the matter shall not be deemed an approval.

b. Except as otherwise expressly provided in this Agreement, approvals required of the Agency shall be deemed granted by the written approval of the Agency's Executive Director or designee. Agency agrees to provide notice to Developer of the name of the Executive Director's designee on a timely basis, and to provide updates from time to time. Notwithstanding the foregoing, the Executive Director or designee may, in his or her sole discretion, refer to the governing body of the Agency any item requiring Agency approval; otherwise, "Agency approval" shall mean and refer to approval by the Executive Director or designee.

Section 807 Real Estate Commissions

Upon Escrow Closing, and only in such event, Developer agrees to pay to Borelli Investment Company ("Developer's Broker") a real estate brokerage commission in an amount set forth in a separate agreement between Developer and Developer's Broker. Developer agrees to indemnify and hold Agency harmless from any liability for or obligation to pay any commission to Broker. Broker has acted solely as agent for Developer and does not represent Agency. Except for the commission Developer is paying to Developer's Broker, Developer and Agency each represent to the other that such party has not incurred, directly or indirectly, any liability on behalf of the other party for the payment of any real estate brokerage commissions or finder's fees or other compensation to any agents, brokers, finders or salespersons in connection

with the purchase and sale of the Site as contemplated hereby (a "Commission"). Each party hereto shall indemnify and hold harmless the other party from any claim, liability or expense for any Commission claimed by reason of the acts of the other party. Developer's Broker shall not be a third party beneficiary to this Agreement.

Section 808 Construction and Interpretation of Agreement

a. The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

b. If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be added as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible.

c. The captions of the articles, sections, and subsections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

d. References in this instrument to this "Agreement" mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments hereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in this instrument. Any references to any covenant, condition, obligation, and/or undertaking "herein," "hereunder," or "pursuant hereto" (or language of like import) shall mean, refer to, and include the covenants, obligations, and undertakings existing pursuant to this instrument and any riders, exhibits, addenda, and attachments or other documents affixed to or expressly incorporated by reference in this instrument.

e. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

Section 809 Time of Essence

Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Agreement.

Section 810 No Partnership

Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture, or any other relationship between the parties hereto other than buyer and seller according to the provisions contained herein, or cause Agency to be responsible in any way for the debts or obligations of Developer, or any other party.

Section 811 Compliance with Law

Developer agrees to comply with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the Site and the Improvements, as well as operations conducted thereon. The judgment of any court of competent jurisdiction, or the admission of Developer or any lessee or permittee in any action or proceeding against them, or any of them, whether Agency be a party thereto or not, that Developer, lessee or permittee has violated any such ordinance or statute in the use of the premises shall be conclusive of that fact as between Agency and Developer.

Section 812 Binding Effect

This Agreement, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

Section 813 No Third Party Beneficiaries

The parties to this Agreement acknowledge and agree that the provisions of this Agreement are for the sole benefit of Agency and Developer, and not for the benefit, directly or indirectly, of any other person or entity, except as otherwise expressly provided herein. Notwithstanding the preceding sentence, the parties agree that the County shall have the right to enforce the obligations set forth in the Schedule of Performance attached hereto as Exhibit 3.

Section 814 Authority to Sign

Developer hereby represents that the persons executing this Agreement on behalf of Developer have full authority to do so and to bind Developer to perform pursuant to the terms and conditions of this Agreement.

Section 815 Incorporation by Reference

Each of the attachments and exhibits attached hereto is incorporated herein by this reference.

Section 816 Counterparts

This Agreement may be executed by each party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument.

PART 9 ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

a. This Agreement is executed in five (5) duplicate originals, each of which is deemed to be an original.

b. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Agency and Developer with respect to all or any part of the subject matter hereof.

c. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of Agency or Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of Agency and Developer.

PART 10 TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY

This Agreement, when executed by Developer and delivered to Agency, must be authorized, executed and delivered by Agency within forty-five (45) days after date of signature by Developer or this Agreement may be terminated by Developer upon written notice to Agency. The effective date of this Agreement shall be the date when this Agreement has been executed by Agency.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, Agency and Developer have signed this Agreement as of the dates set opposite their signatures.

REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS

Dated:_____

By: _____
Jose Esteves
Chairperson

APPROVED AS TO FORM AND LEGALITY
Steven Mattas
Agency General Counsel

By:_____

KB HOME SOUTH BAY Inc. a California corporation

By: _____
Name:
Its: